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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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HONEYWELL INTERNATIONAL INC.
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN, NJ 07962-2245

EXAMINER

NGUYEN, HUY D

ART UNIT	PAPER NUMBER
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2681

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/665,178

Applicant(s)

GILBERT, DAVID

Examiner

Huy D. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17-23, 25-31, 33, 34, 37, 38, 40 and 41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-15, 17-23, 25, 26, 37, 38, 40 and 41 is/are allowed.
- 6) ☒ Claim(s) 1, 27-31, 33 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 27-31, 33-34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 27-31, 33-34 are drawn to a "program" *per se* as recited in the preamble and as such is non-statutory subject matter. See MPEP § 2106.IV.B.1.a. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer

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programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical “things.” They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coberfin et al. (U.S. Patent No. 6,269,243) in view of Koga (Patent No. JP41106448A – Document Identifier: JP 11064484 A).

Regarding claim 1, Coberfin et al. teaches an on-board base station (e.g., transponder 4, figure 2), comprising: an interface device (e.g., antenna 3, figures 1 & 2) on board an aircraft that interfaces with a separate wireless phone of a user inside the aircraft and with a wireless bearer system (figure 1); a controller (e.g., means of authority 5, column 4, line 30) that controls RF emissions of the separate wireless phone, to maintain the RF emissions below a predetermined level (e.g., interference level, column 4, lines 17-36). Coberfin et al. does not clearly teach an RF detector that detects RF emissions of the separate wireless phone, a controller coupled to the RF

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detector to maintain the RF emissions below a predetermined level. The preceding limitations are taught in Koga (see the abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of Koga to the teaching of Coberfin et al. in order to prevent abnormal vibration caused by the radio wave emitted from the emission antenna (see abstract).

Allowable Subject Matter

5. Claims 27-31, 33-34 are rejected under 35 U.S.C. 101 but allowable if rewritten to overcome the 35 U.S.C. 101 rejection. (Suggestion for claims 27 and 34: after "Computer executable code", add "stored on a computer readable medium".)

Claims 8, 12, 18, 26, 41 were allowed previously with the reason set forth in the previous office action (dated 3/08/2005).

Claim 13 has been amended to include the allowable subject matter of claim 16. Therefore, claim 13 is now allowable with the same reason set forth in the previous office action (dated 3/08/2005).

Claim 19 has been amended to include the allowable subject matter of claim 24. Therefore, claim 19 is now allowable with the same reason set forth in the previous office action (dated 3/08/2005).

Claim 37 has been amended to include the allowable subject matter of claim 39. Therefore, claim 37 is now allowable with the same reason set forth in the previous office action (dated 3/08/2005).

Claims 2-7, 9-11 depend on claim 8. Therefore, they are allowable.

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Claims 14-15, and 17 depend on claim 13. Therefore, they are allowable.

Claims 20-23, 25 depend on claim 19. Therefore, they are allowable.

Claims 38 and 40 depend on claim 37. Therefore, they are allowable.

Contact Information

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy D. Nguyen whose telephone number is 571-272-7845. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph H. Feild can be reached on 571-272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Huy Nguyen


JOSEPH FEILD
SUPERVISORY PATENT EXAMINER